

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO.622 OF 2005

Shyam Nagar Zopadpatti
Rahivashi Sangh (Unregistered) & ors. Appellants

Vs.

Union of India & ors.

Respondents

Mr.N.V.Walawalkar with Mr.V.S.Kapse and Mr.Harish
Pawar for appellants.
Mr.S.R.Rajguru for resp.no.1.
Ms.G.P.Mulekar, AGP for resp.no.2.

CORAM: B.H.MARLAPALLE,J.
August 11, 2005.

ORAL ORDER:

1. Heard. Admit. The respondents waive service.

2. As this appeal impugns the order passed on 6th
May 2005 declining to grant ad-interim relief, it can
be disposed at the admission stage itself and more so
because the Deputy Salt Commissioner has filed
affidavit-in-reply to the civil application for
temporary injunction. The Court Receiver is present
before the Court and he refers to the order passed by
this Court in Suit No.2087 of 1984 on 2-9-2003
directing him to take steps to implement the order
dated 4-8-1986 with the assistance of Kanjurmarg
Police Station.

3. The appellants on the other hand contend that their hutments have been existing on the suit land prior to 1982 and they deny that they are the encroachers on the suit land at any time after the Division Bench of this Court passed its order on 4-8-1986 in Appeal No.112 of 1985. The affidavit submitted by the Deputy Salt Commissioner states that by the impugned notices in the pending suit before the trial Court the Court Receiver sought to implement the order passed by this Court on 4-8-1986 so as to protect the suit property from encroachment and the encroachers who allegedly came on the suit plot after 4-8-1986 were sought to be evicted. The appellants claim that they are not encroachers on the land after the Division Bench of this Court passed an order on 4-8-1986 and they claim that they have been residing in their hutments located on the suit land much prior to the filing of Ordinary Original Civil Jurisdiction Suit No.2087 of 1984. These contentions are required to be examined by the trial Court in the pending Notice of Motion and in the mean while the appellants need to be protected. While hearing the Notice of Motion if the trial Court records a prima facie finding that the claim of the appellants is not supported by any plausible evidence, the Notice of

Motion would undoubtedly fail but till then the appellants deserve protection. After hearing Mr. Walawalkar, the learned counsel for the appellants, I am satisfied that prima facie there is a case to grant an order of status quo as at present till the Notice of Motion is decided by the trial Court.

4. Hence the appeal is disposed off by an order of status quo to be maintained till pending Notice of Motion in S.C. Suit No. 2136 of 2005 is heard and decided by the trial Court. The notice of motion shall be heard and decided as expeditiously as possible and preferably by 31st December 2005. The pleadings in the notice of motion, if not ready as at present, shall be completed by 13-9-2005 by the respective parties.

5. No costs.

(B.H.MARLAPALLE,J.)